

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
SEP 28 2000

ABBOTT LABORATORIES,
an Illinois Corporation, and
CENTRAL GLASS COMPANY LTD.,
a Japanese Corporation

Plaintiffs,

v.

BAXTER PHARMACEUTICAL
PRODUCTS, INC.,
a Delaware Corporation, and
BAXTER HEALTHCARE, CORP.
a Delaware Corporation

Defendants.

00C 5939
Judge

Case No. **JUDGE RONALD GUZMAN**

MAGISTRATE JUDGE ASHMAN

JURY TRIAL DEMANDED

FILED-ED4
00 SEP 27 PM 1:35
U.S. DISTRICT COURT
CLERK

COMPLAINT

Abbott Laboratories ("Abbott") and Central Glass Company Ltd. ("Central Glass") by and through their attorneys, hereby complain against the Defendants Baxter Pharmaceutical Products, Inc. and Baxter Healthcare Corp. (collectively "Baxter") as follows.

NATURE OF THE ACTION

1. This is a patent infringement action involving sevoflurane, Abbott's anesthetic inhalant, which it sells under the trademark Ultane®. This anesthetic inhalant is used in the induction and maintenance of general anesthesia in adult and pediatric patients. Abbott filed a New Drug Application and received authorization from the Federal Food and Drug Administration ("FDA") to market and sale sevoflurane in 1995.

THE PARTIES

2. Plaintiff Abbott Laboratories is an Illinois corporation with its principal place of business in Abbott Park, Illinois. Abbott is a diversified health care company.

3. Plaintiff Central Glass is a Japanese corporation with its principal place of business in Tokyo, Japan.

4. Defendant Baxter Pharmaceutical Products, Inc. is a Delaware corporation with its principal place of business in New Jersey. Baxter Pharmaceutical Products, Inc. is a wholly owned subsidiary of Baxter Healthcare Corp.

5. Defendant Baxter Healthcare Corp. is a Delaware corporation with its principal place of business in Deerfield, Illinois.

JURISDICTION AND VENUE

6. Jurisdiction is proper under 35 U.S.C. §§ 271(a), (b), and (e) and 281.

7. Venue is proper under 28 U.S.C. §§ 1391(b), (c) and (d) and 1400(b).

8. This Court has personal jurisdiction over the Defendants because, among other things, Baxter does business and transacts business in this judicial district.

**COUNT I – INFRINGEMENT OF UNITED STATES PATENT NO. 5,990,176
(Plaintiffs: Abbott and Central Glass)**

9. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-8 of their Complaint as if those allegations were set forth verbatim herein.

10. On November 23, 1999, the United States Patent and Trademark Office (“PTO”) duly and legally issued United States Patent No. 5,990,176 (“the ‘176 Patent”), entitled “Fluoroether Compositions and Methods For Inhibiting Their Degradation In the Presence of a Lewis Acid”. A true and correct copy of the ‘176 Patent is attached hereto as Exhibit A. Plaintiffs own all rights and interests in the ‘176 Patent which patent has properly been listed in the FDA Orange Book.

11. Baxter intends to market and sell a sevoflurane product that infringes upon the '176 Patent. Baxter filed with the FDA in Rockville, Maryland an Abbreviated New Drug Application ("ANDA") under 21 U.S.C. § 355(j) to obtain approval for the commercial manufacture, use and sale of sevoflurane. Baxter filed that ANDA to obtain approval to market and sell a generic version of sevoflurane before the expiration date of the '176 Patent. Baxter also filed with the FDA, pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV), a certification alleging that the claims of the '176 Patent are not infringed and are invalid.

12. On or about August 14, 2000, Baxter sent a letter to Abbott and Central Glass by certified mail stating that the sender represented Baxter and was sending the letter on behalf of Baxter to advise Abbott that Baxter had filed an ANDA with respect to sevoflurane and was providing information to Abbott pursuant to 21 U.S.C. § 355(j)(2)(B)(ii). Abbott received this letter on or about August 15, 2000. Central Glass received this letter on or about August 18, 2000.

13. Baxter's sevoflurane product and its method of use for which Baxter seeks FDA approval would infringe one or more claims of the '176 Patent. In addition, under 35 U.S.C. §§ 271(e)(2)(A), Baxter's submission to the FDA of an ANDA and a certification letter pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) to obtain approval for the commercial manufacture, use and sale of sevoflurane before the expiration of the '176 Patent was an act that infringes the claims of the '176 Patent.

WHEREFORE, Plaintiffs pray:

A. That U.S. Patent No. 5,990,176 be judged valid, enforceable, and infringed by Defendants;

B. That the Court declare this an exceptional case and award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to 35 U.S.C. § 285; and

C. That the Court award such other and further relief which this Court deems just and proper.

**COUNT II -- INFRINGEMENT OF U.S. PATENT NO. 6,074,668
(Plaintiff: Abbott)**

14. Abbott repeats and realleges the allegations contained in paragraphs 1-8 of the Complaint as if those allegations were set forth verbatim herein.

15. On June 13, 2000, the PTO duly and legally issued United States Patent No. 6,074,668 ("the '668 Patent"), entitled "Container For An Inhalation Anesthetic." A true and correct copy of the '668 Patent is attached hereto as Exhibit B. Since its date of issue, Abbott owns all rights, title, and interests in the '668 Patent which patent has been properly listed in the FDA Orange Book.

16. Baxter intends to market and sell an inhalation anesthetic product comprising sevoflurane in a manner that would infringe one or more claims of Abbott's '668 Patent. Baxter filed with the FDA in Rockville, Maryland an Abbreviated New Drug Application ("ANDA") under 21 U.S.C. § 355(j) to obtain approval for the commercial manufacture, use and sale of sevoflurane. Baxter filed that ANDA to obtain approval to market and sell a generic version of sevoflurane before the expiration date of the '668 Patent. Baxter also filed with the FDA, pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV), a certification alleging that the claims of the '668 Patent are not infringed and invalid.

17. On or about August 14, 2000, Baxter sent a letter to Abbott by certified mail stating that the sender represented Baxter and was sending the letter on behalf of Baxter to advise

Abbott that Baxter had filed an ANDA with respect to sevoflurane and was providing information to Abbott pursuant to 21 U.S.C. § 355(j)(2)(B)(ii). Abbott received this letter on or about August 15, 2000.

18. Baxter's sevoflurane product and its manner and method of use for which Baxter seeks FDA approval would infringe one or more claims of the '668 Patent. In addition, under 35 U.S.C. §§ 271(e)(2)(A), Baxter's submission to the FDA of an ANDA and a certification letter pursuant to 21 U.S.C. § 355(j)(2)(A)(vii)(IV) to obtain approval for the commercial manufacture, use and sale of sevoflurane before the expiration of the '668 Patent was an act that infringes the claims of the '668 Patent.

WHEREFORE, Abbott prays:

- A. That U.S. Patent No. 6,074,668 be judged valid, enforceable, and infringed by Defendants;
- B. That the Court declare this an exceptional case and award Abbott its reasonable costs, expenses, and attorneys' fees pursuant to 35 U.S.C. § 285; and
- C. That the Court award such other and further relief which this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury for all issues triable of right by jury in this action.

Respectfully submitted,

**ABBOTT LABORATORIES
CENTRAL GLASS CO., LTD.**

Dated: September 27, 2000

By: 

One of Their Attorneys

Edward L. Foote
R. Mark McCareins
Marie A. Lona
Raymond C. Perkins
Peggy M. Balesteri
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

Sharon E. Jones
Abbott Laboratories
100 Abbott Park Road
Abbott Park, Illinois 60064
(847) 937-5201

SEE CASE
FILE FOR
EXHIBITS

JS 4
(Rev. 1/96)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is to be used by the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ABBOTT LABORATORIES
CENTRAL GLASS CO., LTD.

DEFENDANTS

BAXTER PHARMACEUTICAL PRODUCTS
BAXTER HEALTHCARE

JUDGE RONALD GUZMAN

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT LAKE COUNTY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
MAGISTRATE'S OFFICE INVOLVED.

MAGISTRATE JUDGE ASHMAN

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

SEE ATTACHMENT

ATTORNEYS (IF KNOWN)

SEP 28 2000

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff ☒ Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State PTF ☐ DEF ☐
Citizen of Another State ☐ 2 ☐ 2 Incorporated or Principal Place of Business in This State PTF ☐ DEF ☐
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- X 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury -- Med. Malpractice <input type="checkbox"/> 365 Personal Injury -- Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 881 HIA (1395f) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DIWC/DIWW (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

I. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

PATENT INFRINGEMENT ACTION PURSUANT TO 35 U.S.C. §271

II. REQUESTED IN COMPLAINT

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

III. This case ☒ is not a refiling of a previously dismissed action.

☐ is a refiling of case number _____, previously dismissed by Judge _____

DATE

9/27/00

SIGNATURE OF ATTORNEY OF RECORD

Raymond C. Peltier

ATTACHMENT A TO CIVIL COVER SHEET

(C) Attorneys for Plaintiffs (Firm Name, Address and Telephone Number):

Edward L. Foote
R. Mark McCareins
Marie A. Lona
Raymond C. Perkins
Peggy M. Balesteri
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

Sharon E. Jones
Abbott Laboratories
100 Abbott Park Road
Abbott Park, Illinois 60064
(847) 937-5201

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

In the Matter of:

ABBOTT LABORATORIES ET AL
V.

BAXTER PHARMACEUTICAL PRODUCTS, INC. ET AL

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:


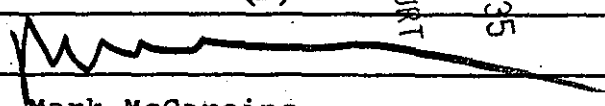
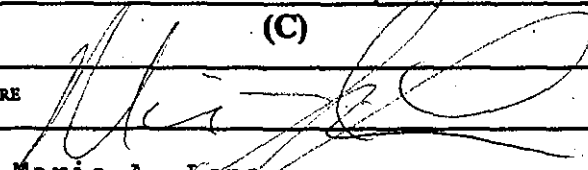
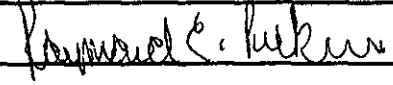
ABBOTT LABORATORIES AND CENTRAL GLASS CO., LTD.

00C 5939
Case Number: **00C 5939**
Judge: **JUDGE RONALD GUZMAN**
MAGISTRATE JUDGE ASHMAN

DOCKETED

SEP 28 2000

FILED-ED4
00 SEP 27 PM 1:35
U.S. DISTRICT COURT

(A)		(B)	
SIGNATURE 	SIGNATURE 	SIGNATURE	SIGNATURE
NAME Edward L. Foote	NAME R. Mark McCareins	NAME	NAME
FIRM Winston & Strawn	FIRM Winston & Strawn	FIRM	FIRM
STREET ADDRESS 35 West Wacker Drive	STREET ADDRESS 35 West Wacker Drive	STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP Chicago, Illinois 60601	CITY/STATE/ZIP Chicago, Illinois 60601	CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER 312-558-5600	TELEPHONE NUMBER 312-558-5600	TELEPHONE NUMBER	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 008446083	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06184152	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	MEMBER OF TRIAL BAR?	MEMBER OF TRIAL BAR?
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	TRIAL ATTORNEY?	TRIAL ATTORNEY?
	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		
(C)		(D)	
SIGNATURE 	SIGNATURE 	SIGNATURE	SIGNATURE
NAME Marie A. Lona	NAME Raymond C. Perkins	NAME	NAME
FIRM Winston & Strawn	FIRM Winston & Strawn	FIRM	FIRM
STREET ADDRESS 35 West Wacker Drive	STREET ADDRESS 35 West Wacker Drive	STREET ADDRESS	STREET ADDRESS
CITY/STATE/ZIP Chicago, IL 60601	CITY/STATE/ZIP Chicago, IL 60601	CITY/STATE/ZIP	CITY/STATE/ZIP
TELEPHONE NUMBER 312-558-5600	TELEPHONE NUMBER 312-558-5600	TELEPHONE NUMBER	TELEPHONE NUMBER
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6207711	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6225834	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	MEMBER OF TRIAL BAR?	MEMBER OF TRIAL BAR?
TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	TRIAL ATTORNEY? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	TRIAL ATTORNEY?	TRIAL ATTORNEY?
DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>	DESIGNATED AS LOCAL COUNSEL?	DESIGNATED AS LOCAL COUNSEL?